

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SONTOS BURGESS and
SAVANA BURGESS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SAMANTHA BURGESS,

Respondent-Appellant,

and

ARMANDO RIOJAS and GABRIEL TRIONE,

Respondents.

UNPUBLISHED

August 26, 2004

No. 254082

Genesee Circuit Court

Family Division

LC No. 01-114761-NA

Before: Hoekstra, P.J. and Cooper and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(c)(i) (conditions that lead to adjudication continue to exist), (c)(ii) (other conditions that cause the child to come within the court's jurisdiction exist and have not been rectified), and (g) (failure to provide proper care or custody).¹ We reverse.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra*. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for

¹ The trial court's order also terminated the parental rights of respondents Armando Riojas and Gabriel Trione, the children's putative fathers. Riojas and Trione have not appealed the order.

termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

Petitioner sought termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g). These grounds required petitioner to demonstrate that respondent had not rectified the conditions that lead to the children being removed from her custody and other conditions, that she could not provide proper care or custody for the children, and that there was no reasonable likelihood that she would be able to rectify the conditions or provide proper care or custody for the children within a reasonable time considering the children's ages. The evidence showed that respondent had complied with the terms of her parent-agency agreements, albeit in some respects in a belated manner. At the time of the termination hearing respondent was employed, had suitable housing, had completed a psychological evaluation, had completed parenting classes, had submitted to some, but not all, random drug screens, and had begun individual counseling. Petitioner's representative acknowledged that respondent had complied with the terms of the various parent-agency agreements, but contended that respondent had taken too long to do so, and asserted that because the children had been out of respondent's care for two years, their placement in a stable environment should not be further delayed. The evidence showed that on several occasions prior to seeking termination of respondent's parental rights, petitioner declined to file a termination petition because respondent was making progress in complying with the requirements of the parent-agency agreements. The evidence showed that respondent continued to comply after petitioner sought termination of her parental rights. Compliance with a parent-agency agreement is evidence of ability to provide proper care and custody for a child. *In re JK, supra* at 214. The trial court clearly erred in finding that the evidence showed that there was no reasonable likelihood or expectation that respondent could rectify the conditions that lead to adjudication or provide proper care or custody for the children within a reasonable time. *Sours, supra*. Petitioner failed to establish by clear and convincing evidence the existence of one or more statutory grounds for termination of respondent's parental rights; therefore, we need not address the question whether termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re JK, supra* at 214-215. The trial court clearly erred by terminating respondent's parental rights.

Reversed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly